A

ADI RADLAN & CO

v.

CREATE FORTUNE ENTERPRISE SDN BHD

B

HIGH COURT MALAYA, JOHOR BAHRU
VERNON ONG LAM KIAT JC
[ORIGINATING PETITION NO: (MT-1) 26-07-2007]
19 MAY 2009

C ***LEGAL PROFESSION:*** *Bill of costs - Application for taxation and for final judgment to be entered - Bill for work done prior to transfer of file to new firm - Whether application justified - Legal Profession Act 1976, s. 135*

D ***CIVIL PROCEDURE:*** *Bill of costs - Application for taxation and for final judgment to be entered - Bill for work done prior to transfer of file to new firm - Whether application justified - Legal Profession Act 1976, s. 135*

E The petitioner law firm, Adi Radlan & Co ('Adi'), applied for a bill of costs of RM18,595.75 to be taxed by the registrar and for final judgment entered against the respondent, Create Fortune Enterprise Sdn Bhd ('CFESB') for the sum so certified by the registrar. The facts disclosed that CFESB obtained a loan of RM10 million from Malayan Banking Berhad ('Maybank') which appointed Adi to F handle Maybank's security documentation. At the material time, one Winston Paul ('Winston') in Adi's firm was in charge of the preparation of the legal documentation. When Winston left Adi's firm to set up his own practice, CFESB's file was transferred to Winston's new firm. Adi then billed CFESB for RM18,595.75 to G which CFESB failed to settle.

Held (allowing the petition):

(1) Once a bill has been taxed by the registrar, the certificate of H the registrar shall be final as to the amount of the costs covered by such certificate. In this instance, the bill of costs related to work done by Adi up to the time the matter was taken over by Winston's firm. It was not disputed that the work in question related to non-contentious business and the fees I payable were regulated by the Solicitor's Remuneration Order 2005 ('SRO'). It was also not disputed that both Adi and Winston's new firm agreed on the sum of RM56,350 being chargeable to and payable by CFESB according to the SRO. In

the premises, this was a proper case for an order that judgment be entered for the sum certified to be due with costs as provided under s. 135 of the Legal Profession Act 1976. (para 8)

Case(s) referred to:
Cheow Chew Khoon @ Teoh Chew Khoon (yang berniaga sebagai Cathay Hotel) v. Abdul Johari Abdul Rahman [1995] 4 CLJ 127 CA ***(refd)***
John Ang & Jega v. Kulasingam Sinatamby [2001] 2 CLJ 198 HC ***(refd)***

Legislation referred to:
Legal Profession Act 1976, ss. 121, 124, 126, 113(6), 135
Rules of the High Court 1980, O. 1A, O. 2 r. 2, O. 18 r. 19

For the petitioner - Adi Radlan; M/s Adi Radlan & Co
For the respondent - BH Ang; M/s Ang & Co

Reported by Usha Thiagarajah

JUDGMENT

Vernon Ong Lam Kiat JC:

[1] This originating petition is for an order that the petitioner's bill no. 35/07/07 dated 30 July 2007 for RM18,595,75 be referred to the registrar for taxation, for final judgment be entered against the respondent on the taxed bill together with interest and costs. The following affidavits were filed in connection with the petition:

(1) petitioner's Affidavit Verifying Petition affirmed on 5 March 2008;

(2) petitioner's 'Afidavit Tambahan' affirmed on 6 March 2008;

(3) respondent's 'Affidavit Jawapan' affirmed by Lim Chong Lim on 6 March 2008;

(4) petitioner's 'Afidavit Balasan' affirmed on 29 May 2008;

(5) respondent's 'Afidavit Jawapan' II affirmed by Lim Chong Lim on 3 June 2008; and

(6) petitioner's 'Afidavit Balasan Kedua' affirmed on 10 July 2008.

Brief Account Of The Facts

[2] The petitioner Adi Radlan & Co. ('Adi') is a law firm established in 1995. The respondent Create Fortune Enterprise Sdn. Bhd. ('CFESB') applied for and obtained a loan for RM10 million

from Malayan Banking Berhad on the terms and conditions set out in Maybank's letter of offer dated 24 January 2007. By a letter dated 2 March 2007 Maybank appointed Adi to prepare, complete and perfect Maybank's security documentation. At CFESB's request Maybank approved the prior release of RM5 million representing half of the loan amount (Maybank's letter of 13 February 2007). After Adi had prepared, completed and perfected the necessary documentation Adi advised for the said sum to be released under letter dated 14 February 2007. The said sum was disbursed by Maybank on 15 February 2007 (Maybank's letter dated 15 February 2007). At the material time one Winston Paul Wong Chi-Huang ('Winston') in Adi's firm was in charge of the preparation of the legal documentation. When Winston left Adi's firm and set up his own practice under the name and style of Winston Wong Law Chambers, CFESB applied to Maybank to transfer the file to Winston's new firm. Maybank acceded to CFESB's request. The matter was taken over by Winston's firm on 20 June 2007. On or about 2 August 2007 Adi delivered to CFESB its bill for RM18,595.75. CFESB failed to settle the said bill.

Preliminary Issue

[3] Learned counsel for CFESB submitted that the petition is an embarrassing pleading and ought to be struck out. It was contended that the petition has failed to state with sufficient particularity the provisions of law under which the court is being moved (*Cheow Chew Khoon @ Teoh Chew Khoon (yang berniaga sebagai Cathay Hotel) v. Abdul Johari Abdul Rahman* [1995] 4 CLJ 127 CA). In considering this preliminary issue the Court must have regard to the justice of the case and not merely to any technical non-compliance of the rules of procedure (see O. 1A of the Rules of the High Court 1980). In this regard it has not been shown there has been any prejudice to CFESB. The relief sought in the petition is clear and unambiguous. It is unlikely that CFESB was either misled or confused or taken by surprise. If the petition is an embarrassment then CFESB ought to have promptly applied to strike out the petition under O. 18 r. 19 or O. 2 r. 2 of the Rules of the High Court 1980. This CFESB did not do. For the foregoing reasons the court finds that CFESB's contention is without merit.

Principal Issues

[4] This is a fairly straight-forward matter concerning a solicitor's fees and disbursements for professional services rendered. The issues to be determined by the court are:

1. Whether Adi is entitled to have its bill taxed? A

2. Whether Adi is entitled to immediate judgment?

Whether Adi Is Entitled To Have Its Bill Taxed?

[5] Learned counsel for Adi submitted that Adi's right to tax its bill is provided in Part IX of the Legal Profession Act 1976 ('the Act') under ss. 124 and 126 under the heading 'Recovery And Taxation Of Costs'. CFESB agreed to bear the legal fees and disbursements as provided in para 12 in Annexure 1 (General Terms And Conditions) of Maybank's letter of offer to CFESB. Paragraph 12 is as follows: B C

> **12. Costs, Expenses And Fees**
>
> All costs and expenses including legal fees (on a solicitor and client basis), stamp duty, incidental fee or other charges incurred in the preparation of all documentation and perfection of the Bank's security shall be borne by you. In the event you, having accepted this letter, fail for any reason whatsoever to proceed with the facility(s), all costs and expenses whatsoever incurred by the Bank and any solicitors instructed by the Bank shall be borne by you. You shall be liable to pay all fees and expenses including the Bank's legal fees if any monies shall be required to be recovered by any process of law or by the Bank's solicitors.

D E

[6] In reply learned counsel for CFESB submitted that the matter handled by Adi relates to a non-contentious matter. According to s. 113(6) of the Act the taxation of a bill of costs in respect of non-contentious matters is regulated by the Solicitors Remuneration Order 2005 ('SRO'). The SRO does not provide for taxation of bills of costs. Section 121 of the Act only provides for taxation of costs in relation to contentious business only. Therefore Adi's petition is misconceived and should be dismissed with costs. F G

Findings Of The Court

[7] Section 113(6) of the Act expressly provides for the taxation of bills of costs in respect on non-contentious business subject, however, to s. 121 and the SRO. It is quite clear that taxation of bills of costs for non-contentious matters is provided for in the Act. In this regard Part IX of the Act sets out the rules and procedures for the recovery and taxation of costs. In this connection this court adopts the elaborate findings of Abdul Malik Ishak J (now JCA) in *John Ang & Jega v. Kulasingam Sinatamby* [2001] 2 CLJ 198 particularly at p 226: H I

Part IX is general

In sharp contrast would be Part IX and under it there are ss. 122 - 136 of the Act. Part IX sets out the rules for the recovery and taxation of costs in great detail. It is intended to cover both contentious and non-contentious business. It is quite obvious that the whole of Part IX consisting of 15 sections makes no distinction at all between gross sum bills and detailed bills. The phrase 'bill of costs as earlier defined in s. 121 of the Act includes both gross sum bills and detailed bills, and that phrase can also be found in ss 124, 125, 126, 128, 129, 130 and 132 of the Act. In other parts of the Act, the words 'costs' and 'bill' appear. Nowhere in Part IX do the specific expression 'bill for a gross sum' or 'bill containing detailed items' or their abbreviated forms appear.

Indeed it is very obvious that part IX with its detailed rules governing enforcement and taxation is meant specifically to apply to both gross sum bills as well as detailed bills, whether issued in regard to contentious or non-contentious business. The scheme of the Act is such that each section in Part IX must apply equally to all bills, and in that sense ss. 126 and 128 of the Act are general in nature and they would apply to both types of bills as spelt out in s. 121(1) of the Act.

Whether Adi Is Entitled To Immediate Judgment?

[8] Once a bill has been taxed by the registrar, the certificate of the registrar shall be final as to the amount of the costs covered by such certificate. In this instance, the bill of costs relates to the work done by Adi up to the time the matter was taken over by Winston's firm. It is not disputed that the work in question relates to non-contentious business and the fees payable are regulated by the SRO. It is also not disputed that both Adi and Winston's new firm agree on the sum of RM56,350 being chargeable to and payable by CFESB according to the SRO. In the premises the court is of the view that this is a proper case for an order that judgment be entered for the sum certified to be due with costs as provided under s. 135 of the Act.

[9] For the foregoing reasons the court finds that (i) Adi is entitled in law to tax the bill of costs and (ii) judgment should be entered for the sum certified by the registrar. In the premises the court allowed prayers (a), (b), (c) and (d) of originating petition.